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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,042	09/07/2000	Weifang Luo	08935-220001 / M-4931	2542

7590

10/09/2002

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EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 10/09/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

ms 14

Office Action Summary

Application No.

09/658,042

Applicant(s)

LUO ET AL.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2002 and 20 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23, 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 1, 3-22, 24, 27-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claims 1, 3-12, 16-22, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomantschger *et al.* (US 5,108,852), for reasons of record as applied to original claims 2-7 and 9-12.

New claims 35 and 36 differ from Tomantschger *et al.* only by the amount of active material within the overall cathode composition, which would be a matter of optimization to the ordinary artisan, for reasons stated in paper no. 9, pages 3 and 4.

Claims 13-15, 24, 27 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomantschger *et al.* (above) in view of Friend *et al.* (US 5110693), for reasons of record. See paper no. 9, page 4.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomantschger *et al.* (above) in view of Di Franco (US 5,041,199), for reasons of record. See paper no. 9, pages 4 and 5.

Claims 23, 25 and 26 are allowed. These claims are now independent. Their subject matter is considered allowable for reasons stated on paper no. 9, page 6.

Applicant's arguments filed 7/18/02 have been fully considered but they are not persuasive.

Applicants argue that the present cell is primary, and thus not rechargeable, while Tomantschger *et al.* disclose a rechargeable cell. This is not persuasive because the materials of

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both cells are the same. These include an anode of zinc (examples 1 and 3 of Tomantschger *et al.*), an alkaline electrolyte (column 8, lines 20-24), and a cathode of MnO₂ with electrically conductive fibers such as carbon (column 8, lines 35-59). Since the materials are the same, the cell of Tomantschger *et al.* would be just as “primary” as the present cell. If there is some feature which renders one cell rechargeable and the other non-rechargeable, it is not recited in the present claims.

Applicants argue that Friend *et al.* is directed to catalytic electrodes. While this is true, their teachings are still considered relevant to Tomantschger *et al.* because of their common use of carbon as a conductive agent, and because of their common alkaline environment.

Applicants do not specifically allege any deficiencies of Di Franco, which is cited for its teaching of surfactants.

Hanawa *et al.* (US 5,938,978) is withdrawn due to its preference for flaky graphite.

Applicant's declaration of 9/20/02 is acknowledged.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is (703) 308-0433. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on (703) 308-2383. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

sjk
October 3, 2002



STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP